

AMENDMENTS TO THE DRAWINGS

The attached replacement sheet for Figure 5 addresses the informalities discussed in the Office Action but does not make any substantive changes. Thus, no annotated sheet is presented.

REMARKS

Claims 1-19, 33 and 34 are pending. Favorable reconsideration is requested.

Fig. 5 was objected to as being unclear. A formal version of Fig. 5 is being submitted herewith. Withdrawal of the objection is respectfully requested.

In the Office Action, claims 1, 10-18, 33 and 34 were rejected under 35 U.S.C. § 103 over Gilbert and Dawson, and now Gershon (US Patent Pub. No. 2005/0027634). Claims 2-4, 6-9 and 19 were rejected under 35 U.S.C. § 103 over Gilbert, Dawson, Gershon, and further in view of Silverman. Claim 5 was rejected under 35 U.S.C. § 103 over Gilbert, Dawson, Gershon and Silverman, and further in view of Togher. Applicants traverse.

Initially, in the Remarks to Amendments/Arguments section of the Office Action, the Examiner incorrectly indicated that applicants had provided arguments with regard to Gershon. However, Gershon was only first cited in the most recent Office Action. Applicants request that this statement be disavowed in the next Office Action.

With regard to the rejection, applicants note that certain portions of the Gershon reference relied upon by the Examiner as allegedly corresponding to the claims are clearly not a part of that reference, and are, in fact, non-existent. For example, starting at the bottom of page 9 of the Office Action, the Examiner states:

“Additionally, Gershon also teaches in step 212 of Fig. 15 that when a current best offer is cancelled, the new offer price becomes best offer price and when the current best bid price is cancelled, the new best bid price is a bid price less than the new offer price (see Gershon: Figs. 14-16: [¶¶ 0097-0119]).” Office Action at pages 9-10.

However, Gershon does not include a Fig. 15. Nor does it include Figs. 14-16. Thus, applicants cannot discern what the basis of the rejection is. At least in view of the foregoing, the Office Action does not set forth a *prima facie* case as it refers to alleged teachings of the cited reference that do not exist. Applicants request issuance of a new, and *non-final* Office Action,

containing references to portions of the cited reference, so that applicants can determine how to respond to the Office Action.¹

Although the foregoing issues are sufficient to obviate the current rejection, with regard to the other positions taken in the Office Action, applicants comment as follows.

As was pointed out in the previous response, neither Gilbert nor Dawson relate to the calculation of indicative rates. Gilbert describes, in the portions cited by the Examiner, an inside market that is available to qualified traders that have the best bids and offers in the general market that have prices that meet predetermined criteria (see paragraph [0010]). These predetermined criteria may include, among other things, for example, the spread between the bid and offer prices being less than a predetermined difference (see paragraph [0010]). In other words, Gilbert is about selecting traders to participate in an exclusive market separate from the normal market. This is nothing to do with deriving indicative rates as claimed.

Dawson describes a system in which prices of a currency or commodity are periodically fixed. Successive rates samples of the currency or commodity are received from a plurality of sources over a period of time, recorded and filtered automatically by reference to a historical record and predetermined validation criteria so as to categorize certain samples as valid or to derive a fixed rate, which is then released to users (see Dawson's abstract). In other words, Dawson is about fixing *actual prices* for currencies or commodities based on historical data of past prices. This is not deriving indicative rates. It is producing an *actual price that is available in the market*, which is not what is claimed in the independent claims, which provide indicative prices, that are an indicative of the prices in the market, but which are not actual prices to be traded.

The newly cited Gershon reference describes a method for calculating a bid and/or offer price of a derivative, and particularly an option, related to an underlying asset (see abstract). It describes a complex model for doing this, which is described throughout the application. As described at the end of paragraph [0035], by feeding the model with real time market data, the

¹ Applicants also note that neither Gilbert nor Dawson, the other references utilized in the rejection of the independent claims, include any Figs. 14-16.

model generates real time market prices for derivatives and, therefore, the model automates the process of buying/selling derivatives. This document is about calculating a price to buy or sell a derivative so that the buying or selling process can be automated. In effect, *this arrangement produces prices that are actually put in the market* and therefore produces actual prices. Again, this runs counter to the idea of indicative rates.

As to the position taken in the Office Action that Gilbert's paragraph [0008] teaches the recited indicative rates, applicants disagree. First, this paragraph is not entirely self consistent. A portion of the paragraph it appears to simply say that the "market price" includes the "best" bid price (presumably actually on the market), the "best" offer price (presumably actually on the market), and the mid-price, which, as is known in the art, is simply the median average of the bid and offer prices actually on the market. See attached Investopedia page. None of these would meet the claim feature relating to calculating an indicative price. The last sentence of paragraph [0008] is confusing and inconsistent with the remainder of the paragraph. Since a reference can only be relied upon for what it clearly teaches, and this paragraph, when taken as a whole, does not *clearly* teach *anything* with regard to what it is relied upon for, the paragraph cannot properly be used in a rejection.

In summary, none of the cited documents either alone or in combination teach or reasonably suggest a rates processor configured to derive indicative bid and offer rates from the best price bid and offer rates by defining a minimum indicative rates spread between bid and offer prices and adjusting the best price rates to maintain a spread greater or equal to the defined minimum indicative rates spread and greater than the best price spread as required by independent claims 1, 17 and 33. Neither do they teach or suggest a rates processor configured to filter received best price bid and offer rates to remove high frequency fluctuations in the received rates to obtain indicative bid and offer rates, and to adjust the indicative rates only to maintain a predetermined minimum spread as required by independent claim 18. The references also fail to teach or suggest setting the indicative rate bid and offer prices to the received best bid and offer prices and alternately adding an amount to the indicative offer rates and subtracting an amount from the indicative bid rates until the spread between the indicative bid and offer rates is greater than or equal to the predefined minimum

indicative rates spread and greater than the spread between the best bid and offer prices as required by claim 34.

For at least the foregoing reasons, and the fact, mentioned above, that the rejection of the independent claims is based on non-existent portions of the Gershon reference, the rejection of the independent claims is believed to be untenable and should be withdrawn. In any event, in view of the incomplete nature of the Office Action, especially with regard to the citations to the Gershon reference, the next Office Action, if it is not a Notice of Allowance, should be made non-final.

In view of the above amendment and remarks, applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

By Joseph W. Ragusa
Joseph W. Ragusa
Registration No.: 38,586
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
(212) 277-6500
Attorney for Applicants